

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Tessa Yesselman	Team: Squad #12	CCRB Case #: 201608020	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 09/14/2016 3:11 PM	Location of Incident: In front of 614 West 152nd Street.	Precinct: 30	18 Mo. SOL 3/14/2018	EO SOL 3/14/2018	
Date/Time CV Reported Sun, 09/18/2016 2:21 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sun, 09/18/2016 2:21 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Malcial Tuero	17578	946346	030 PCT
2. POM Steven Moran	02932	947275	030 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Malcial Tuero	Force: PO Malcial Tuero used physical force against § 87(2)(b)	
B.POM Malcial Tuero	Force: PO Malcial Tuero used physical force against § 87(2)(b)	
C.POM Steven Moran	Force: PO Steven Moran used physical force against § 87(2)(b)	

### Case Summary

§ 87(2)(b) filed this complaint with the CCRB via the CCRB online website on September 18, 2016.

On September 14, 2016, at approximately 3:11 PM, § 87(2)(b) was standing outside of 614 West 152<sup>nd</sup> Street, smoking a marijuana cigarette. PO Malcial Tuero, followed by PO Steven Moran, exited their vehicle and approached § 87(2)(b). PO Tuero hit the marijuana cigarette out of § 87(2)(b) hand (**Allegation A**). PO Tuero and PO Moran pushed § 87(2)(b) to the ground (**Allegation B, Allegation C**).

§ 87(2)(b) was arrested and charged with resisting arrest, attempted tampering with physical evidence, criminal possession of marijuana in the fifth degree, and unlawful possession of marijuana (**08 Board Review**).

§ 87(2)(g)

There is no video evidence in regards to this case.

### Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- § 87(2)(b) § 87(2)(c)
- § 87(2)(b) § 87(2)(c)
- On September 25, 2016, a Notice of Claim Inquiry returned negative results from the NYC Comptroller's Office (**01 Board Review**).

### Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been party (**12 Board Review**).
- PO Tuero has been a member of service for eight years and has one prior CCRB case where no allegations were substantiated.
- PO Moran has been a member of service for eight years and has seven previous allegations with no substantiations. PO Moran has three previous allegations of physical force.

### Findings and Recommendations

#### **Allegation A: PO Malcial Tuero used physical force against § 87(2)(b)**

It is undisputed that § 87(2)(b) was smoking a marijuana cigarette, that § 87(2)(b) lifted the cigarette up toward his mouth when the officers approached, and that PO Tuero hit the marijuana cigarette out of his hand.

§ 87(2)(b) stated that he did not know that the officers were police and he thought he was going to get jumped. He brought the marijuana cigarette to his mouth to hold it there in case he needed his hands. He did not succeed in getting the marijuana cigarette to his mouth because PO Tuero hit his hand, causing him to drop it, prior to it getting to his mouth.

PO Tuero and PO Moran both stated that they informed him that they were police officer and that § 87(2)(b) was attempting to swallow the marijuana. PO Tuero stated that he hit the marijuana out of § 87(2)(b) hand to keep him from swallowing it.

PO Tuero noted in both the arrest report (**11 Board Review**) that § 87(2)(b) attempted to swallow the marijuana cigarette, and further noted in the criminal court complaint (**10 Board Review**) that § 87(2)(b) attempted to swallow the marijuana cigarette, and that he “hit” the cigarette out of § 87(2)(b) hand to prevent § 87(2)(b) from doing so.

Patrol Guide Procedure 221-01 states that an officer is not to forcibly remove objects from an individual’s mouth once the individual has placed an object inside it (**05 Board Review**).

§ 87(2)(g)  
[REDACTED]

**Allegation B: PO Malcial Tuero used physical force against § 87(2)(b)**

**Allegation C: PO Steven Moran used physical force against § 87(2)(b)**

§ 87(2)(b) stated that he was standing outside of 614 West 152<sup>nd</sup> Street, smoking a marijuana cigarette. PO Tuero approached § 87(2)(b) and asked him if he had “weed in that blunt?” § 87(2)(b) did not know that PO Tuero was a police officer, and did not respond to PO Tuero. PO Tuero was standing to § 87(2)(b) right side, and PO Moran approached § 87(2)(b) and PO Tuero, and stood to § 87(2)(b) left side. PO Tuero lifted his shirt on his right side. § 87(2)(b) thought that PO Tuero was showing him a gun, and that he was going to be robbed, because he did not know that PO Tuero was a police officer. § 87(2)(b) thought that he was going to have to defend himself against PO Tuero, and he attempted to put the marijuana cigarette back in to his mouth, so that both hands would be free. PO Tuero slapped the marijuana cigarette out of § 87(2)(b) hand before § 87(2)(b) could put the cigarette back to his mouth.

§ 87(2)(b) was not aware that PO Tuero and PO Moran were police officers and thought that he was getting robbed, so he tensed his body up in anticipation of needing to protect himself. § 87(2)(b) stated that after the marijuana cigarette was hit out of his hand, he was immediately pushed down to the ground by the back of his head by PO Moran, and PO Moran landed with his knee in § 87(2)(b) back. § 87(2)(b) was not given any verbal commands, or told that he was being placed under arrest (**02 Board Review**).

PO Tuero stated that he observed § 87(2)(b) smoking a marijuana cigarette while on anti-crime patrol with PO Moran. PO Moran was the operator of the police vehicle, and PO Tuero was the recorder. PO Tuero exited the police vehicle while PO Moran parked, and approached § 87(2)(b). PO Tuero verbally identified himself as a police officer to § 87(2)(b). § 87(2)(b) opened his mouth, and raised the marijuana cigarette to his mouth.

PO Tuero stated that after he hit the marijuana cigarette out of § 87(2)(b) hand, he and PO Moran leg swept § 87(2)(b) to the ground. PO Moran immediately handcuffed § 87(2)(b) and PO Tuero retrieved the marijuana cigarette. PO Tuero did not believe that § 87(2)(b) was attempting to flee. § 87(2)(b) was brought to the ground because he was going to be placed under arrest for the marijuana, and would not put his arms behind his back. The only movement that § 87(2)(b) made was tensing his arms in front of his body (**04 Board Review**).

PO Moran stated that after PO Tuero hit § 87(2)(b) marijuana cigarette to the ground, he told § 87(2)(b) to put his arms behind his back. PO Moran did not recall how many times he instructed § 87(2)(b) to put his arms behind his back. PO Moran and PO Tuero tried to pull § 87(2)(b) arms behind his back, and § 87(2)(b) pulled his arms away, and pulled his arms towards the front of his body. PO Moran pushed § 87(2)(b) to the ground by his shoulder. PO Moran fell to the ground with § 87(2)(b) and landed on his knee next to § 87(2)(b) (03 Board Review).

NYPD Patrol Guide Procedure 221-01 defines de-escalation as “taking action in order to stabilize a situation and reduce the immediacy of the threat so that more time, options, and/or resources become available...The goal is to gain voluntary compliance of the subject, when appropriate and consistent with personal safety, to reduce or eliminate the necessity to use force. The procedure further states that an officer may apply no more than the reasonable force necessary to gain control of an arrestee **(05 Board Review)**).

§ 87(2)(g)

Investigator: \_\_\_\_\_  
Signature Print Date

Squad Leader: \_\_\_\_\_  
Signature Title/Print Date

